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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1377/LA4/71. *Dated, Trivandrum 14th March 1971.*

The following Bill together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 67 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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Fourth Kerala Legislative Assembly
Bill No. 32

THE KERALA LAND CONSERVANCY (AMENDMENT) BILL, 1971

A

BILL

to amend the Kerala Land Conservancy Act, 1957.

Preamble.—WHEREAS it is expedient to amend the Kerala Land Conservancy Act, 1957, for the purposes hereinafter appearing:

BE it enacted in the Twenty-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Land Conservancy (Amendment) Act, 1971.

(2) It shall be deemed to have come into force on the 5th day of January, 1971.

2. *Amendment of section 3.*—In section 3 of the Kerala Land Conservancy Act, 1957 (8 of 1958) (hereinafter referred to as the principal Act), in sub-section (1),—

(i) in clause (a), for the word "Jenmies", the words "Jenmies, Wargdars" shall be substituted;

(ii) in clause (b), before the word "holders", the words "persons registered in the revenue records as" shall be inserted;

(iii) in clause (d), for the word "licence", the words "lease or licence", shall be substituted;

(iv) after *Explanation I*, the following *Explanation* shall be inserted, namely:—

"*Explanation I A.*—Where the ownership and possession, or the possession, of any land are or is vested in the Government under section 86 or section 87 of the Kerala Land Reforms Act, 1963 (1 of 1964), such land shall, so long as it is in the possession of the Government, be the property of Government within the meaning of this section.";

(v) after *Explanation III*, the following *Explanation* shall be inserted, namely:—

"*Explanation IV.*—Lands belonging to the Government of any other State in India or to the Kerala State Electricity Board or to

the Kerala University or to the Calicut University or to the Travancore Devaswom Board or to the Cochin Devaswom Board or to a corporation owned or controlled by the Government of Kerala or to a municipal corporation shall be deemed to be the property of Government within the meaning of this section.".

3. *Amendment of section 5.*—Section 5 of the principal Act shall be re-numbered as sub-section (1) of that section, and—

(a) to sub-section (1) as so renumbered, the following *Explanation* shall be added, namely:—

"*Explanation.*—For the removal of doubts it is hereby declared that the erection of any wall, fence or building or the putting up of any over-hanging structure or projection (whether on a temporary or permanent basis) on or over any land aforesaid shall be deemed to be occupation of such land.";

(b) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), it shall not be lawful for any person to erect or cause to erect any wall, fence or building or put up or cause to put up any over-hanging structure or projection (whether on a temporary or permanent basis) on or over any land referred to in sub-section (1) except under and in accordance with the terms and conditions of a licence issued by the Government or such officer of the Government as may be empowered by them in this behalf.

(3) Any person desirous of obtaining a licence referred to in sub-section (2) may apply to the Government or to such officer of the Government as may be empowered by them in this behalf for an appropriate licence.

(4) An application under sub-section (3) shall be in such form and shall contain such particulars and shall be accompanied by such fee, as may be prescribed by rules made under this Act.".

4. *Amendment of section 6.*—In section 6 of the principal Act,—

(a) for the word "earth", wherever it occurs, the words and brackets "earth (including sand)" shall be substituted;

(b) to sub-section (3), the following proviso shall be added, namely:—

"Provided that where the offence is committed in relation to sand,—

(i) a fine not exceeding one hundred rupees in the case of a first offence; and

(ii) a fine not exceeding two hundred rupees in the case of a second or subsequent offence,

may be imposed on the person committing the offence and on every person who abets the commission of the offence.";

(c) in sub-section (4),—

(i) in the opening paragraph, for the words "compensation or damages", the words "compensation, fine or damages" shall be substituted;

(ii) in clause (a), for the words "any agriculturist,", the words "any agriculturist or agricultural labourer," shall be substituted;

(iii) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—For the purposes of clause (a), "agricultural labourer" means a person whose principal means of livelihood is the income he gets as wages in connection with the agricultural operations he performs.".

5. *Substitution of new section for section 7*.—For section 7 of the principal Act, the following section shall be substituted, namely:—

"7. *Punishment for unauthorisedly occupying land which is the property of Government*.—(1) Whoever occupies a land which is the property of Government, whether a poramboke or not, contrary to section 5 shall be liable to pay—

(a) such fine not exceeding two hundred rupees; and

(b) in the case of a continuing contravention, such additional fine not exceeding two hundred rupees for every day during which such contravention continues after fine has been imposed for the first such contravention,

as may be imposed by the Collector:

Provided that a person unauthorisedly occupying a land which is available for assignment under the Kerala Government Land Assignment Act, 1960, shall not be liable to pay any fine under sub-section (1) if—

(i) he is eligible under the rules made under that Act for assignment of such land without auction; and

(ii) he applies under those rules for the assignment of such land in his favour, either on registry or on lease.

(2) Without prejudice to any liability under sub-section (1), any person who erects or causes to erect any wall, fence or building or puts up or causes to put up any over-hanging structure or projection (whether on a temporary or permanent basis) in contravention of sub-section (2) of section 5 shall be liable, on conviction by a magistrate, to be punished with fine which may extend to two

hundred rupees and, in the case of a continuing contravention, with an additional fine which may extend to two hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Explanation.—A tenant unauthorisedly holding over after the expiry of his term of lease is liable to a fine under this section.".

6. *Amendment of section* 8.—In sub-section (2) of section 8 of the principal Act,—

(a) in the second paragraph, the words ",and the liability to pay such assessment shall cease from the date on which the land concerned is relinquished" shall be omitted;

(b) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—For the purposes of this section, occupation for any period during a financial year shall be deemed to be occupation for the whole of the financial year.".

7. *Amendment of section* 11.—In section 11 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Notwithstanding anything contained in sub-section (2), where the Collector is of opinion in any case falling under sub-section (1) that it is expedient in the public interest to take urgent action without following the procedure laid down in sub-section (2), he may, after recording his reasons for so doing, issue a notice to the person in occupation calling upon him to vacate the land within such period as may be specified in the notice, and if the land is not vacated within the said period, any officer authorised by the Collector may enter upon the land and take possession of the same, if necessary by using such force as the circumstances may justify.".

8. *Amendment of section* 12.— In section 12 of the principal Act,—

(a) to the first paragraph, the following proviso shall be added, namely:—

"Provided that no such notice shall be necessary—

(i) when the Collector takes action under sub-section (3) of section 11; or

(ii) in the case of any person unauthorisedly occupying any land which is the property of Government, if, within a period of two years prior to the date of such occupation, he had been evicted from such land under section 11 or had vacated such land voluntarily after the receipt of a notice under this section or section 11.";

(b) for the second paragraph, the following paragraph shall be substituted, namely:—

"The Collector may require any subordinate officer not below the rank of Deputy Tahsildar or any other officer authorised by the Government in this behalf to hold the enquiry as prescribed in the preceding paragraph and submit the record to him; and on such record the Collector may pass orders.".

9. *Substitution of new sections for sections* 16, 17, *and* 18.—For sections 16, 17 and 18 of the principal Act, the following sections shall be substituted, namely:—

"16. *Appeal and revision.*—(1) Any person aggrieved by any decision or order of the Collector under this Act (otherwise than on appeal) may appeal to the Board of Revenue, and the Board of Revenue may pass such order on the appeal as it thinks fit.

(2) Any person aggrieved by any decision or order under this Act of any officer authorised under section 15 may appeal,—

(a) where such officer is the Revenue Divisional Officer, to the Collector:

Provided that no such appeal shall lie in any case where the decision or order is passed by the Revenue Divisional Officer on appeal under clause (b); and

(b) in all other cases, to the Revenue Divisional Officer, and the Collector or the Revenue Divisional Officer, as the case may be, may pass such order on the appeal as he thinks fit.

(3) The Board of Revenue may, either *suo motu* or on application, call for and examine the record of any decision made or order passed under this Act by the Collector or any officer authorised under section 15 for the purpose of satisfying itself as to the correctness, legality, propriety or regularity of such decision or order and may pass such order with respect thereto as it thinks fit:

Provided that the Board of Revenue shall not revise any decision or order if an appeal against such decision or order is pending or if the time for preferring appeal against such decision or order has not expired.

(4) The Government may, either *suo motu* or on application, call for and examine the record of any decision made or order passed by the Board of Revenue or the Collector or any officer authorised under section 15 for the purpose of satisfying themselves as to the correctness, legality, propriety or regularity of such decision or order and may pass such order with respect thereto as they think fit.

(5) No order shall be passed under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) without giving the party who may be affected thereby an opportunity of being heard.

(6) Pending disposal of any appeal or revision under this Act, the appellate authority or the revising authority, as the case may be, may suspend the execution of the decision or order appealed against or sought to be revised.

17. *Limitation for appeal and revision.*—(1) No appeal or revision shall be preferred under section 16 after the expiration of thirty days from the date on which the decision or order appealed against or sought to be revised was received by the appellant or applicant, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), the appellate authority or the revising authority may admit an appeal or application for revision preferred after the period specified in that sub-section, if such authority is satisfied that the appellant or applicant had sufficient cause for not preferring the appeal or application within that period.

(3) The Board of Revenue shall not *suo motu* call for and examine the record of any decision or order, if the decision or order has been made or passed more than one year previously.

(4) The Government shall not *suo motu* call for and examine the record of any decision or order, if the decision or order has been made or passed more than two years previously.

18. *Petition of appeal or application for revision to be accompanied by the decision or order appealed against or sought to be revised.*—Every petition of appeal or application for revision under this Act shall be accompanied by the decision or order appealed against or sought to be revised or by an authenticated copy of the same.".

10. *Insertion of new section 20A.*—After section 20 of the principal Act, the following section shall be inserted, namely:—

"20A. *Bar of jurisdiction of civil courts.*—(1) No civil court shall have jurisdiction to entertain any suit or proceeding for the eviction of any person who is in unauthorised occupation of any land which is the property of Government, whether a puramboke or not, or the recovery of any fine, assessment or prohibitory assessment or the value of any trees destroyed or appropriated or any compensation or damages, payable under this Act or cost of eviction or removal of encroachments, or any portion of such fine, assessment, prohibitory assessment, value of trees, compensation, damages or cost.

(2) No suit, prosecution or other legal proceeding shall lie against the Government or the Board of Revenue or any officer of the Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.".

11. *Repeal and saving.*—(1) The Kerala Land Conservancy (Amendment) Ordinance, 1971 (1 of 1971), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

Experience in the working of the Kerala Land Conservancy Act, 1957, has revealed that the Act requires amendments for its effective and speedy implementation. For example, in cases of mass encroachments of Government lands and in cases where eviction of encroachers has to be immediately effected, the ordinary procedure under the Act is found to be ineffective. Therefore, a provision for empowering the Collector to take immediate action in such circumstances without following the ordinary procedure is considered necessary. Similarly the need for providing deterrent penalties in the case of continuing offences is very strongly felt, since the tendency to make inroads into Government lands is on the increase.

2. It is also considered necessary to make the Act applicable to lands belonging to other State Government, the Kerala State Electricity Board, etc.

3. As the Legislative Assembly was not in session, the required amendments were made by means of an Ordinance promulgated by the Governor on the 5th January, 1971 and published as Ordinance No. 1 of 1971. The Bill seeks to replace the Ordinance by an Act of the Legislature.

4. The Notes on clauses explain in detail the various provisions of the Bill.

FINANCIAL MEMORANDUM

The Bill if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (4) of section 5 proposed to be inserted by sub-clause (b) of clause 3 of the Bill provides that the form of application for a licence, the particulars to be contained in such application and the fee to be paid along with the application shall be such as may be prescribed by rules. These are matters of procedure and detail and, therefore, the delegation of legislative power is of a normal character.

BABY JOHN.